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TRACEY CORDES, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY ilg / 6/12/15 SCANNED BY ilg / 6/12/15

1 Michael E. Barnhart
2 424 East Main Street
3 Pottersville, Michigan 48876
4 Phone: 517-202-1189
5 Email: mtb_trucking@yahoo.com

6 Plaintiff in Pro Se

1:15-cv-627
Janet T Neff
U.S. District Judge

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF MICHIGAN**

10 **MICHAEL BARNHART**

11 Plaintiff,

12 vs.

13 **NATIONSTAR MORTGAGE, LLC; and**
14 **DOES 1-10, inclusive**

15 Defendants

Case No. :

**VERIFIED COMPLAINT FOR
DAMAGES, RESTITUTION, AND
INJUNCTIVE RELIEF**

1. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT;
2. ACCOUNTING;
3. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;
4. INJUNCTIVE RELIEF; and
5. QUIET TITLE

DEMAND FOR TRIAL BY JURY

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23 **COMES NOW** Plaintiff, Michael Barnhart ("Plaintiff") and for his Complaint against
24 Defendant Nationstar Mortgage, LLC; and DOES 1-10 plaintiff alleges as follows:

25 **PARTIES**

- 26 1. Plaintiff Michael Barnhart ("BARNHART") is an individual, and at all relevant
27 times a resident of the county of Eaton.
28

1 2. Plaintiff is the sole owner of the residential real property commonly known as
2 424 East Main Street, Potterville, Michigan 48876 (hereinafter, "Subject Property"), and more
3 particularly described as:

4 **LOT 7 AND THE EAST ½ OF LOTS 8 AND 9, BLOCK 24, IN THE VILLAGE**
5 **(NOW CITY) OF POTTERVILLE, ACCORDING TO THE PLAT THEREOF, AS**
6 **RECORDED IN LIBER 1 OF PLATS, PAGE 51B, EATON COUNTY RECORDS**

7 3. Plaintiff is informed and believes and thereon alleges at all times mentioned
8 herein, defendant Nationstar Mortgage, LLC (hereinafter referred to as "NATIONSTAR") is a
9 foreign limited liability company doing business in the State of Michigan and County of Eaton.

10 4. Defendant DOES 1-10 are sued by their fictitious names, their true names and
11 capacities are unknown to Plaintiff.

12 5. Plaintiff believes that each fictitiously named Defendant DOE 1-10 is a person or
13 entity who participated in, assisted, was retained by, or counseled by one of the other
14 Defendant's herein in connection with the acts alleged herein of which Plaintiff complains. At all
15 times herein mentioned each defendant was an agent, officer, board member, servant, employee,
16 partner, joint venturer of the other defendants and each of them and all times herein mentioned,
17 each defendant was acting within the course and scope of this relationship as an officer, board
18 member, agent, servant, employee, partner or joint venturer of the other defendants, and each of
19 them.

20 6. Defendants DOES 1-10, inclusive, are sued under fictitious names. When their
21 true names and capacities are known, Plaintiff is informed and believes and thereon alleges that
22 each of these fictitiously named defendants is legally responsible, negligently or in some other
23 actionable manner, for the events and happenings hereinafter referred to and proximately thereby
24 caused the injuries and damages to Plaintiff as hereinafter alleged, or claims some right, title,
25 estate, lien, or interest in the residence adverse to Plaintiff's title. Said claims, constitute a cloud
26 on Plaintiff's title in property, and are a result therefrom unlawful or fraudulent acts that resulted
27 in injury to Plaintiff's property.
28

JURISDICITON AND VENUE

7. Subject-matter jurisdiction for this Court exists: pursuant to 28 U.S.C. Section 1331, because this is an action brought by a consumer for violations of the Fair Debt Collection Practices Act (hereinafter “FDCPA”) (any reference to the FDCPA or any party thereof encompasses all relevant parts and subparts thereto) 15 U.S.C. §1692 et seq.

8. The Court has personal jurisdiction over Defendant because they specifically engaged in conduct injurious to Plaintiff who is located in the county of Eaton, state of Michigan. Defendant did this with the full knowledge that Plaintiff was and is in the state of Michigan and county of Eaton, and that their actions would cause injury to Plaintiff in the state of Michigan.

9. Venue is proper in the United States District Court for the Western District of Michigan pursuant to U.S.C. section 1391.

INTRODUCTION

10. Plaintiff is proceeding, pro se in this case. Therefore, this Court must construe this claim liberally and hold it to a less stringent standard than the Court would apply to a pleading drafted by a lawyer. See, *Laber v. Harvey*, 438 F.3d 404, 413 n. 3 (4th Cir. 2006).

(a) In *Picking*, the plaintiff’s civil rights were 150 pages long and described by a Federal Judge as “inept.” The Court held that where a plaintiff pleads pro-se in a suit for protection of civil rights, the court should endeavor to construe plaintiff’s pleading without regard to technicalities. *Picking v. Pennsylvania Railway*, (151 F2d. 240) (N.J. is in 3rd Cir.), Third Circuit Court of Appeals.

(b) In *Walter Process Equipment v. Food Machinery*, 382 U.S. 172 (1965) it was held that in a “motion to dismiss, the material allegations of the complaint are taken as admitted.” From this vantage point, courts are reluctant to dismiss complaints unless it appears the plaintiff can prove no set of facts to support of his claim which would entitle him to relief. (See, *Conley vs. Gibson*, 335 U.S. 41 (1957).

11. Moreover, Plaintiffs claim that statements of counsel in motion, briefs or in oral arguments are not facts before this Court. (See, *Trinsey v. Pagliaro*, 229 F. Supp. 647).

13. Under the FDCPA 15 U.S.C. § 1692a(4) the term “**creditor**” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

15. Under the FDCPA 15 U.S.C. § 1692a(6) the term “**debt collector**” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

17. Under the FDCPA 15 U.S.C. § 1692f - A debt collector may not use unfair or
unconscionable means to collect or attempt to collect any debt.

4

1 interest in real property securing the consumer's obligation, bring such action only in a judicial
2 district or similar legal entity in which such real property is located.
3

4 GENERAL ALLEGATIONS

5 Plaintiff is informed and believes and therefore alleges that:

6 19. This alleged debt was acquired by Defendant after it was in purportedly in
7 default, according to FDCPA 15 USC 1692a(6), if a debt is acquired while in default the entity
8 that acquires it is considered to be a "debt collector." This statute makes no exception regarding
9 the method of acquisition of the debt, so therefore it would not matter if the alleged debt was
10 acquired by or through a successor in interest, or if they were able to provide a copy of the
11 purchase assumption agreement which specifically lists the alleged debt .
12
13

14 20. Plaintiff in this action is a victim of unlawful acts perpetrated by Defendant, in
15 efforts to unlawfully foreclose on Plaintiff's property. According to the FDCPA, the only
16 method of foreclosure that a debt collector can avail themselves to would be a judicial
17 foreclosure, and even if Defendant was to prevail the judgment could only be for monetary
18 compensation, 15 USC 1692i. In taking the actions Defendant has taken by illegally attempting
19 to foreclose on Plaintiff's real property through use of non-judicial foreclosure, Defendant has
20 made numerous violations of the FDCPA.
21

22 21. Defendant is engaged in the collection of debts from consumers using the mail
23 and telephone. Defendant regularly attempts to collect debts alleged to be due to another. Under
24 the FDCPA 15 U.S.C. § 1692 a(6) the term "debt collector" means any person who uses any
25 instrumentality of interstate commerce or the mails in any business the principal purpose of
26 which is the collection of any debts, or who regularly collects or attempts to collect, directly or
27 indirectly, debts owed or due or asserted to be owed or due another. Defendant here is a debt
28 collector under the FDCPA. Defendant is NOT a creditor or a lender.

1 22. In addition, where a loan servicer becomes the loan servicer after the borrower is
2 in default, the loan servicer is a “debt collector” and becomes obligated to comply with the
3 FDCPA in all respects. See *Santoro v. CTC Foreclosure Serv. Corp.*, 12 F. App’x. 476, 480 (9th
4 Cir. 2001); *Kee v. R-G Crown Bank*, 656 F. Supp. 2d 1348, 1354 (D. Utah 2009) (determining
5 ‘that a loan servicer . . . is only a ‘debt collector’ within the meaning of the FDCPA if it acquires
6 the loan after it is in default’). See also *Alibrandri v. Fin. Outsourcing Servs., Inc.*, 333 F.3d 82
7 (2d Cir. 2003) (holding that a debt was in “default” and a service provider was a “debt collector,”
8 by virtue of the service providers collection letter declaring the debt in default and informing the
9 debtor that the service provide was, in fact, a debt collector). Here, Defendant obtained the loan
10 after it was in default.

11
12 23. Federal courts have held that WFB must comply with the FDCPA. A Federal
13 District Court within the Ninth Circuit Court of Appeals has held that Wells Fargo Bank, N.A.
14 may be a debt collector required to comply with the FDCPA. *Williams v. Wells Fargo Bank,*
15 *N.A., Et al.*, 2012 U.S. Dist. LEXIS 2871 (W.D. WA, January 12, 2012).

16
17 24. In *Williams*, the consumers alleged Wells Fargo was in violation of federal debt
18 collection laws by failing to provide verification of the alleged debt. 15 U.S.C. §1692, et seq. In
19 their motion to have the lawsuit thrown out, Wells Fargo did not claim that the bank had
20 provided verification of the debt to the consumers. Instead, the bank asserted two reasons the
21 case should be dismissed. First, WFB argued it was not a debt collector under the FDCPA. The
22 bank argued that the FDCPA only applies to “parties collecting the debt of another,” 15 U.S.C. §
23 1692(a)(6), and that “creditors, mortgagors and mortgage servicing companies are not ‘debt
24 collectors’ and are exempt from liability under the [FDCPA].” *Id.* (citing *Caballero v. OCWEN*
25 *Loan Servicing*, 2009 U.S. Dist. LEXIS 45213, 2009 WL 1528128, at *1 (N.D. Cal. 2009) and
26 *Glover v. Fremont Inv. and Loan*, 2009 U.S. Dist. LEXIS 117890, 2009 WL 6114001, at *8
27 (N.D. Cal. 2009)). Simply put, Wells Fargo argued that because it was collecting its own debts it
28 was exempt from FDCPA liability. Second, Wells Fargo claimed that the FDCPA does not apply

1 in a non-judicial foreclosure proceeding. Basically, the bank argued that when there is a typical
2 foreclosure on a deed of trust, (where there is no lawsuit filed by the bank), the bank is not
3 attempting to collect money, and thus they are not really attempting to collect a debt. In this case,
4 Defendant did not and has not verified the debt after Plaintiff has asked a numerous amount of
5 times.

6
7 25. The federal court disagreed with Wells Fargo on both grounds. The court
8 reasoned the term "debt collector" applies to those who acquired the debt when it was already in
9 default. See *Schlosser v. Fairbanks Capital Corp.*, 323 F.3d 534, 536 (7th Cir. 2003). The Court
10 noted that Wells Fargo admitted the debt had already been in default for one year when the deed
11 of trust was assigned to Wells Fargo, and thus Wells Fargo met the definition of a debt collector
12 under the FDCPA. Next, the Court ruled on the issue of whether foreclosing on property could be
13 considered an attempt to collect a debt, and it stated: "Although the Court is aware of district
14 court cases that have held that the act of foreclosing on property is not "debt collection" under
15 the FDCPA, this Court has not adopted such a per se holding and it will not do so here. See
16 *Albers v. Nationstar Mortg. LLC*, 2011 U.S. Dist. LEXIS 182, 2011 WL 43584, at *2 E.D.Wash.
17 Jan. 3, 2011) (citing cases). Nothing in the statute compels the Court to create an exception to the
18 definition of " debt collector," as Wells Fargo proposes, where a party is judicially enforcing on
19 a security instrument rather than pursuing debt collection through more traditional means. To the
20 contrary, courts have reasoned that as long as a defendant meets the statutory definition of debt
21 collector, "they can be covered by all sections of the Act . . . regardless of whether they also
22 enforce security interests. " *Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373, 378 (4th
23 Cir. 2006) (referring to § 1692f(6) as an inclusive provision); see also *Kaltenbach v. Richards*,
24 464 F.3d 524, 528-29 (5th Cir. 2005) (noting that "the entire FDCPA can apply to a party whose
25 principal business is enforcing security interests but who nevertheless fits § 1692a(6)'s general
26 definition of debt collector").
27
28

1 26. Furthermore, Plaintiff is a “consumer” as that term is defined in 15
2 USC§1692a(3) since the alleged debt here deals with the purchase of a home, which means it’s a
3 debt incurred for personal family purposes.

4 27. In addition, where a loan servicer becomes the loan servicer after the borrower is
5 in default, the loan servicer is a “debt collector” and becomes obligated to comply with the
6 FDCPA in all respects. *See Santoro v. CTC Foreclosure Serv. Corp.*, 12 F. App’x. 476, 480 (9th
7 Cir. 2001); *Kee v. R-G Crown Bank*, 656 F. Supp. 2d 1348, 1354 (D. Utah 2009) (determining
8 ‘that a loan servicer . . . is only a ‘debt collector’ within the meaning of the FDCPA if it acquires
9 the loan after it is in default’). *See also Alibrandri v. Fin. Outsourcing Servs., Inc.*, 333 F.3d 82
10 (2d Cir. 2003) (holding that a debt was in “default” and a service provider was a “debt collector,”
11 by virtue of the service providers collection letter declaring the debt in default and informing the
12 debtor that the service provider was, in fact, a debt collector).

13 28. Furthermore, Plaintiff is a “consumer” as that term is defined in 15
14 USC§1692a(3) since the alleged debt here deals with the purchase of a home, which means it’s a
15 debt incurred for personal family purposes.
16

17 29. Plaintiff does not have a contract with Defendants. Therefore, Defendants have no
18 standing.
19

20 30. That collection of any alleged debt after having been written off or charged off
21 would be a case of unjust enrichment, and /or fraud on the consumer and/or fraud on the court.

22 31. To the best of Plaintiff’s knowledge and belief, Defendants have used the mails of
23 the United States to attempt to collect from Plaintiff an alleged debt purportedly previously
24 owed to an “original creditor,” other than Defendants, which has purportedly been “charged
25 off.”

26 32. Defendant has violated FDCPA, 15 U.S.C. §1692e, because it made and/or
27 employed false, deceptive and misleading representations and/or means in connection with the
28 instant cause of action. Said false, deceptive and misleading representations were and have been

1 made and are being made to credit reporting bureaus and others as more specifically set out
2 hereafter. Some or all of said false, deceptive and misleading representations were knowingly
3 and intentionally made by Defendants.

4 33. Defendants have violated the FDCPA, 15 U.S.C. §1692d because it has engaged
5 in conduct of which the natural consequence of which is to harass, oppress, or abuse Plaintiff in
6 connection with the alleged attempt to collect on this debt and foreclosure of Plaintiff's
7 property. Defendant knowingly and intentionally engaged in harassing, oppressive, and/or
8 abusive conduct toward Plaintiff. Defendant knew or should have known that the natural
9 consequences of said conduct would be to harass, oppress, or abuse Plaintiff.
10

11 34. Plaintiff, here was deceived, and Defendant misrepresented themselves implying
12 they were entitled to act as a Creditor, and have initiated a non-judicial foreclosure against the
13 Subject Property even though at no time did Defendants have any proof that Plaintiff owed them
14 any alleged debt.

15 35. Defendants have violated the FDCPA, and is liable to Plaintiff for statutory,
16 actual, and punitive damages thereon, attorneys' fees, and costs. Said violations include, but are
17 not limited to violations of 15 U.S.C. §1692e, et seq. and 15 U.S.C. §1692d, et seq.
18

19 36. Defendants have knowingly, intentionally, deliberately, and fraudulently
20 misrepresented, and/ or mislead what Plaintiff's legal status, character, and/or amount of
21 the alleged debt was in violation of 15 U.S.C. §1692e(2), and in violation of
22 U.S.C.151692e(10).

23 37. By attempting to collect on this alleged debt, Defendants falsely,
24 knowingly, deliberately, fraudulently, and intentionally misrepresented to Plaintiff and all
25 other persons having or acquiring knowledge of the actions of Defendants against Plaintiff,
26 including credit reporting bureaus, and persons or entities Plaintiff might seek to obtain
27 credit from, present or future potential employers of Plaintiff, and other persons and
28

1 entities that it has the legal right to pursue this account in this Court. Defendant's actions
2 all constitute violations of the FDCPA and the Fair Business Practices Act.

3 38. Defendant has not verified or produced: any accounting or financial
4 records, necessary to prove the breakdown of the purported "total" amount alleged to be
5 owed, with respect to its components, such as principal, interest, late fees, over limit fees,
6 etc. or their current license in the state of Michigan to act as a debt collector.

7
8 **FIRST CLAIM FOR RELIEF**
9 **VIOLATION OF THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT**
(FDCPA), 15 U.S.C. § 1692 *ET SEQ.*

10 39. Plaintiff incorporates the allegations in all preceding paragraphs as if fully set forth
11 herein.

12 40. Defendant is a "debt collectors" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

13 41. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

14 42. Defendant has violated the FDCPA in connection with its attempts to collect an
15 account against Plaintiff. Defendants violations include, but are not limited to, 15 U.S.C. §
16 1692d, 1692e, 1692e(2)(A), 1695e(5), 1692e(8), 1692e(10), 1692g 1692i.

17 43. Defendant engaged in conduct of which the natural consequence of which is to
18 harass, oppress, or abuse Plaintiff in connection with the collection of a debt. Defendant used
19 false, deceptive, or misleading representations or means in connection with the collection of a
20 debt which was supported by the unauthenticated assignments.

21 44. Further, there is no specific amount of value indicated on this assignment; even if
22 Defendant were able to provide an authenticated Power of Attorney. (Plaintiff wants to reserve
23 the right to petition the Notary's log for authentication and validation.) An accounting that is
24 signed and dated by the person responsible for the account has not been produced. Claim of
25 damages, to be admissible as evidence, must incorporate records such as a general ledger and
26 accounting of the alleged debt, the person responsible for preparing and maintaining the account
27 general ledger must provide a complete accounting which must be sworn to and dated by the
28 person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauano*, 62 Haw. 334, 614

1 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App
2 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and
3 *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986).

4 45. Non-judicial foreclosure, attempting to seize property is a violation of FDCPA 15
5 USC 1692i.

6 46. Defendants violated FDCPA by failing to validate the alleged debt as required by
7 15 USC 1692g.

8 47. Plaintiff alleges that Defendants routinely ignored plaintiff's request for an
9 accounting and debt validation, and through their actions continued to violate FDCPA rules to
10 enhance their own profits.

11 48. Defendant's conduct was negligent or willful or both, rendering it liable for
12 attempting to collect fees, interest, and expenses from Plaintiff that are not authorized by any
13 agreement or permitted by law, in violation of 1692f(1).

14 49. Defendant's conduct was negligent or willful or both, rendering it liable for
15 failing to cease collection of an alleged debt, and not providing proper validation of the alleged
16 debt to Plaintiff. 1692g(b).

17 50. As a result of the foregoing violations, Defendant is liable for actual damages,
18 including general damages and special damages in an amount to be proven at trial, but not less
19 than \$2,000 per Plaintiff, pursuant to 15 U.S.C. §1692k(a)(1).

20 51. As a result of the foregoing violations, Defendant is liable for actual damages,
21 including general damages and special damages in an amount to be proven at trial, but not less
22 than \$1,000 per Plaintiff, pursuant to 15 U.S.C. § 1692k (a)(2)(A).

23 52. As a result of the foregoing violations, Defendant is liable for costs and
24 reasonable attorney's fees pursuant to 15 U.S.C. § 1692k (a)(3).

25 53. As a result of the foregoing violations, Defendant should be enjoined from
26 employing any of the unlawful conduct, methods, acts, or practices under the FDCPA alleged
27 herein or proven at trial.
28

1 54. An actual controversy has arisen and now exists between Plaintiff and Defendant
2 concerning their respective rights and duties under the FDCPA. A judicial declaration that
3 Defendant's actions violated the FDCPA is necessary so that all parties may ascertain their rights
4 and duties under the law.

5 55. Based on the allegations above and further set forth herein, Defendant violated 15
6 U.S.C. §1692d by (1) engaging in conduct the natural consequence of which is to harass,
7 oppress, or abuse plaintiff without limitation; (2) Continuing to pursue collection of disputed and
8 unverified debt; (3) attempting to foreclose on Plaintiff's property; (4) forcing Plaintiff to defend
9 against an invalid action. Defendant knew or should have known that it has engaged in such
10 conduct, and the said consequences thereof.

11 56. Upon information and belief, Defendant has communicated credit information to
12 persons, including but not limited to credit reporting bureaus or agencies, with respect to
13 Plaintiff, which it knew or should have known to be false - including without limitation
14 allegations that Plaintiff owed the purported debt which is the subject of this action, and/or that
15 Plaintiff owes said debt to Defendant and/or that Defendant are the original creditor of said
16 alleged debt.

17 57. Upon information and belief, Defendant is in violation of 15 U.S.C. §1692e(8),
18 because Defendant failed to communicate to Plaintiff, other persons and entities, including credit
19 bureaus, and persons yet to be determined, that Plaintiff has disputed the alleged debt.

20 58. An actual controversy has arisen and now exists between Plaintiff and Defendant
21 concerning their respective rights and duties under FDCPA. A judicial declaration that
22 Defendant's actions violated the FDCPA is necessary so that all parties may ascertain their rights
23 and duties under the law.

24 59. By falsely representing that Defendant is either an assignee of an original creditor,
25 and/or that said assignment constitutes a proper, competent, or valid assignment between
26 Defendant and the original creditor of any alleged debt by any alleged original creditor to
27 Defendant, and/or that Defendant is the original creditor, Defendant has made material, false and
28 misleading representations, and has further communicated to Plaintiff and other persons credit
information which is known or which should be known to be false, including the above, the

1 failure to communicate that a disputed debt is disputed, the “re-aging” of said debt, the false and
 2 misleading representation and impression that Defendant is the original creditor of said debt, and
 3 other material false and misleading representations, and has violated 15 U.S.C. §1692e, 15
 4 U.S.C. §1692e(8), §1692e(2)(A), § 1692e(5), § 1692e(10) and § 1692f. Defendant either knew or
 5 should have known all of the above.

6 60. Under the FDCPA 15 U.S.C. § 1692f - A debt collector may not use unfair or
 7 unconscionable means to collect or attempt to collect any debt; taking or threatening to take any
 8 non-judicial action to effect dispossession or disablement of property if—(A) there is no present
 9 right to possession of the property claimed as collateral through an enforceable security interest.
 10 In *Armacost v. HSBC Bank USA*, No. 10-CV0274-EJL-LMb, 2011 WL 825151 (D. Idaho Feb. 9,
 11 2011) the plaintiff generally alleged violations of 15 U.S.C. § 1692f and argued that defendant
 12 did not have standing to foreclose on the deed of trust. Defendant here also does not have
 13 standing to foreclose. The court first noted that the definition of “debt collection” found in 15
 14 U.S.C. § 1692a(6) included the following sentence: “For the purpose of section 1692f(6) of this
 15 title, [a debt collector] also includes the principal purpose of which is the enforcement of security
 16 interests.” *Id.* It then explained that 15 U.S.C. § 1692f(6) prohibits a debt collector from “taking
 17 or threatening to take any non-judicial action to effect dispossession or disablement of property
 18 if (A) there is no present right to possession of the property claimed as collateral through an
 19 enforceable security interest” *Id.* at n.5 (quoting 15 U.S.C. §1692f(6)). The case stated, “if ‘debt
 20 collection’ generally included the enforcement of a security interest, the language specifying so
 21 for the purposes of §1692f(6) would be surplus, and such a construction would violate a ‘long
 22 standing canon of statutory construction that terms in a statute should not be construed so as to
 23 render any provision of that statute meaningless or superfluous.” *Id.* (quoting *Beck v. Prupis*, 529
 24 U.S. 494, 506 (2000)) (footnote omitted). The court thus concluded that while “a non-judicial
 25 foreclosure action generally does not constitute a “debt collection activity” under the FDCPA,”
 26 an exception to this rule existed for claims under 15 U.S.C. 1602f(6) *Id.*

27 61. The FDCPA, §1692k, provides for actual damages, statutory damages up to one-
 28 thousand dollars (\$1,000.00) per violation, costs of the action, and reasonable attorneys’ fees.
 Plaintiff has suffered actual damages as the proximate and actual cause and result of the

1 violations of the FDCPA by Defendant to be determined at trial. Defendant is liable to Plaintiff
 2 for statutory damages as prescribed by §1692k (a)(2)(A), actual damages pursuant to §
 3 1692k(a)(1) in an amount to be determined at time of trial, and reasonable attorneys' fees and
 4 costs pursuant to §1692k(a)(3).

5 62. Courts will carefully scrutinize non-judicial foreclosures and set them aside if the
 6 borrower's rights have been violated. *Stirton v. Pastor* (1960) 2 Cal. Rptr. 135, 177 Cal. App. 2d
 7 232.

8 63. Plaintiff hereby prays for actual damages under the FDCPA, and for statutory
 9 damages as set forth above for each and every violation of the FDCPA proven at the trial of this
 10 case, and reasonable attorneys' fees and costs thereunder.

11 **SECOND CLAIM FOR RELIEF**
 12 **ACCOUNTING**

13 64. Plaintiff re-alleges and incorporates by reference all the preceding paragraphs as
 14 though fully set forth herein.

15 65. Plaintiff is a consumer as set forth above and the alleged debt owed is a consumer
 16 debt pursuant to the FDCPA.

17 66. Defendant is a debt collector in the business of collecting debts.

18 67. The elements for a claim for accounting are: (i) a fiduciary relationship or other
 19 circumstances appropriate to the remedy, and (ii) a balance due from the plaintiff to defendant
 20 that can only be ascertained by an accounting.

21 68. Defendant has held themselves out to be plaintiff's creditor and mortgage
 22 servicer. As a result of this purported relationship, said defendant has a duty to plaintiff to
 23 properly account for payments made by plaintiff. Moreover, a fiduciary relationship between the
 24 parties is not required to state a cause of action for accounting. All that is required is that some
 25 relationship exists that requires an accounting.

26 69. Plaintiff believes and is informed that the amount claimed due and owing is not
 27 correct.
 28

1 70. Plaintiff has a reasonable and good faith belief that the claimed arrearages include
2 improper excess charges and fees imposed by the defendant without plaintiff's knowledge or
3 consent, which are not allowed by law.

4 71. It would be inequitable and unconscionable for defendant to retain the profit,
5 benefit, and other compensation they obtained from their fraudulent, deceptive, and misleading
6 conduct alleged herein. Therefore, these monies are due to be credited back to plaintiff in full.

7 72. The actual amount of the arrearages on plaintiff's loan and the actual amount of
8 money due from plaintiff to defendant, and vice versa, is unknown to plaintiff and cannot be
9 ascertained without an accounting of the receipts and disbursements of the aforementioned
10 transactions.

11 **THIRD CLAIM FOR RELIEF**
12 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

13
14 73. Plaintiff incorporates the allegations in all preceding paragraphs as if fully set
15 forth herein.

16 74. Defendant's acts and/or omissions were done intentionally and/or with gross
17 indifference to Plaintiff's rights.

18 75. Plaintiff's emotional distress includes, but is not limited to, extreme
19 humiliation, anxiety and a loss of sleep. As a result of the Defendant's conduct, Plaintiff has
20 suffered compensatory, general, and special damages in an amount according to proof.
21 Additionally, Defendant acted with malice, fraud and/or oppression, by attempting to take
22 Plaintiff's property through foreclosure when they have no legal right to do so, and thus,
23 Plaintiff is entitled to an award of punitive damages.
24

25 **FOURTH CLAIM FOR RELIEF**
26 **INJUNCTIVE RELIEF**

27 76. Plaintiff incorporates the allegations in all preceding paragraphs as if fully set
28 forth herein.

1 77. At all times relevant, Defendant, has wrongfully and unlawfully threatened
2 Plaintiff's quiet enjoyment and use of his real property.

3 78. Defendant threatened conduct, unless and until enjoined and restrained by this
4 Court will cause great and irreparable injury to Plaintiff in that it Plaintiff will be deprived of
5 the quiet use and enjoyment of his real property.
6

7 79. Not only did Defendant threatened conduct cause great and irreparable harm to
8 Plaintiff unless and until enjoined, that same threatened conduct will cause great and
9 irreparable harm to Plaintiff's family.

10 80. In this case, the irreparable harm that Plaintiff will suffer is obvious and
11 enormous. Plaintiff will lose his real property and will be ultimately evicted from his home.
12 Plaintiff will incur the cost and emotional distress of losing his home and repairing his further
13 damaged credit history. Undeniably, Plaintiff will suffer severe damages.
14

15 **FIFTH CLAIM FOR RELIEF**
16 **QUIET TITLE**

17 81. Plaintiff incorporates the allegations in all preceding paragraphs as if fully set
18 forth herein.

19 82. On or about March 17, 2006, Plaintiff executed a Mortgage with Bank of
20 America, N.A. (A true and correct copy of the Mortgage is attached as Exhibit 1).

21 83. On or about August 9, 2012, Nationstar Mortgage, LLC executed an
22 Assignment of Mortgage, as an attorney-in-fact of Bank of America, N.A. The Assignment of
23 Mortgage was recorded on September 24, 2012 in the State of Michigan, Eaton County. (A
24 true and correct copy of the Assignment of Mortgage is attached as Exhibit 2).

25 84. On or about October 23, 2012, a Corporate Assignment of Mortgage was
26 executed by Bank of America, N.A. The Corporate Assignment of Mortgage was recorded
27 November 5, 2012. Mortgage, LLC executed an Assignment of Mortgage, as an attorney-in-
28 fact of Bank of America, N.A. The Assignment of Mortgage was recorded on September 24,

1 2012 in the State of Michigan, Eaton County. (A true and correct copy of the Corporate
2 Assignment of Mortgage is attached as Exhibit 3).

3 85. The Assignments recorded create several questions of fact as to who actually
4 owns Plaintiff's Mortgage and who has the right to collect payments from the Plaintiff.

5 86. Plaintiff alleges that the Assignment executed by Defendant are forged
6 fraudulent Assignments that Defendant is using to foreclose on Plaintiff's home.

7 87. Plaintiff is informed and believes and thereupon alleges that Defendant Nationstar
8 and Does 1-10 claim an interest in the property adverse to plaintiff herein. However, the claim of
9 said Defendant is without any right whatsoever, and said Defendant has no legal or equitable
10 right, claim, or interest in said property.

11 88. Plaintiff therefore seeks a declaration that the title to the subject property is vested
12 in plaintiff alone and that the defendant herein, and each of them, be declared to have no estate,
13 right, title, or interest in the subject property and that said defendant, and each of them, be
14 forever enjoined from asserting any estate, right, title or interest in the subject property adverse
15 to plaintiff herein.

16 89. Plaintiff is informed and believes and thereupon alleges that by no means is
17 Plaintiff seeking to undo a foreclosure sale after the fact.

18 **CONCLUSION**

19
20 Here, Defendant does not have standing or the enforceable right to take possession of
21 Plaintiff's Property, because of the failure to comply with strict statutory, legal contractual
22 duties. Said action will result in the wrongful foreclosure of the Property. Being that
23 Defendant is a debt collector the only remedy they are entitled to would be a judicial
24 foreclosure. However, knowing that they would not have to prove standing or the proper
25 documentation they are attempting foreclosure through non-judicial foreclosure and thereby
26 violating the FDCPA.

27
28 Further, Plaintiff is concerned that Defendant and DOES 1-10, unless restrained, will
attempt to remove Plaintiff from the possession of the Subject Property by an unlawful

1 detainer action. Defendants is knowledgeable that any such action would cause irreparable
2 harm to the Plaintiff, as well as cause monetary compensation which will not afford adequate
3 relief because Plaintiff's property is unique.

4
5 Thereby, Plaintiff respectfully request that a temporary restraining order is necessary
6 to ensure that Plaintiff and his family are not displaced before the court has had an opportunity
7 to hear, and adjudicate the case as to its merits, and whether or not it can proceed to a hearing
8 in front of a jury.

9 **PRAYER**

10
11 **WHEREFORE**, Plaintiff having set forth the claims for relief against Defendant,
12 respectfully pray that this Court grant the following relief against the Defendant:

13 1. For equitable relief, including an Order for Defendant to rescind all Notices of
14 Default against Plaintiff's account and to engage in reasonable efforts to restore Plaintiff's credit
15 to its previous standing and by entering a statement which says "Paid as Agreed";

16
17 2. For a temporary and preliminary injunction enjoining Defendant from transferring
18 the Subject Property of or from taking any action to evict Plaintiff from his home during the
19 pendency of this action;

20
21 3. That the Court issue a declaration that the Defendant be required to release the lien
22 on the Subject Property;

23 4. That the Court Order judgment quieting title to Plaintiff as the owner of the Subject
24 Property and that all Defendant has no title, right to the estate, lien or interest in the property;

25 5. That the Court enter a judgment declaring Defendant's actions and practices
26 complained of herein to be unlawful, unfair, and fraudulent;

27
28 6. For injunctive relief against Defendant to prevent future wrongful conduct;

7. That Plaintiff recover costs, and reasonable attorney fees, if incurred;

1 8. That Defendant be required to specifically prove all allegations in this action;

2 9. For general damages and special damages in an amount to be proven at trial, but
3 not less than \$2,000 per Plaintiff, pursuant to 15 U.S.C. 1692(k) a 1;
4

5 10. For actual damages, including general damages and special damages in an amount
6 to be proven at trial, but not less than \$1,000 per cross-complainant, pursuant to 15 USC 1692(k)

7 11. For costs and reasonable attorney's fees pursuant to 15 USC 1692(k) a 3.

8 12. For a judicial declaration that Defendant's actions violated the FDCPA;

9 13. For Punitive damages; and
10

11 14. For such other and further relief as the Court may deem just, equitable and proper.

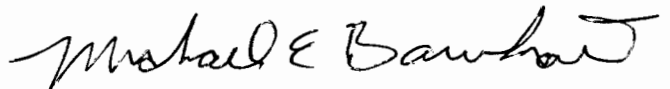
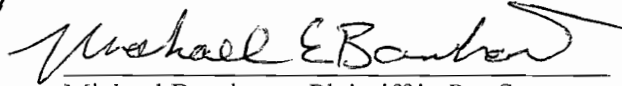
12 Dated: June 11, 2015

13 
14 
Michael Barnhart – Plaintiff in Pro Se

15 **DEMAND FOR TRIAL BY JURY**

16 Plaintiff demands a trial by jury.

17
18 Dated: June 11, 2015

19 
20 
Michael Barnhart – Plaintiff in Pro Se

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28 **VERIFICATION**

1 I, Michael Barnhart, acknowledge that I am the Plaintiff in the above-entitled action. The
2 same is true of my own knowledge, except as to those matters which are therein alleged on
3 information and belief, and as to those matters, I believe them to be true.

4 I declare under penalty of perjury under the laws of the State of Michigan that the
5 foregoing is true and correct.

6 Executed at Potterville, Michigan this 11th day of June, 2015.

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8 

9 Michael Barnhart – Plaintiff in Pro Se
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